RM-10821

UNITED STATES DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration
Washington, D.C. 20230

October 24, 2003

Ms Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, S W
Washington, DC 20554

Dear Ms Dortch·

Enclosed please find an original and four (4) copies of the petition for rulemaking of the National Telecommunications and Information Administration. Copies of this petition have been hand-delivered to John B. Muleta, Chief, Wireless Telecommunications Bureau, and Edmond J Thomas, Chief, Office of Engineering and Technology.

Please direct any questions you may have regarding this letter to the undersigned Thank you for your cooperation

Respectfully submitted,

Kathy D. Smith
Chief Counsel

Enclosures

UNITED STATES DEPARTMENT OF COMMERCE
National Telecommunications and Information Administration
Washington, D C 20230

October 24, 2003

Mr John B. Muleta
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
The Portals
445 Twelfth Street, S.W
Washington, DC 20554

Dear Mr. Muleta:

The National Telecommunications and Information Administration (NTIA), an Executive Branch agency within the Department of Commerce, manages and authorizes the Federal Government's use of the radio frequency spectrum.[1] For the reasons stated below, NTIA urges the Commission to work with NTIA to allocate the frequencies 161.975 MHz (Channel 87B) and 162 025 MHz (Channel 88B) for government and non-government use on a shared basis nationwide for Automatic Identification Systems (AIS) exclusively.

Channels 87B and 88B are necessary in the United States for AIS operations that are essential for maritime safety and homeland security. AIS is an International Maritime Organization (IMO) recognized broadcast-based shipborne navigation system that serves as the foundation for the system of Vessel Traffic Service (VTS) in the United States operated by the U S Coast Guard (Coast Guard), as well as for that already operated along the St. Lawrence Seaway by the Saint Lawrence Development Corporation (SLSDC). The Coast Guard and many port authorities are anxious to implement AIS in ports and waterways in the United States. AIS facilitates the efficient exchange of data between ships and between shore stations and ships that have been fitted with appropriate equipment This system will be essential in fulfilling portions of the homeland security mission requirements to protect ports and inland waterways within the United States. Recognizing the importance of an AIS system to collect, integrate, and analyze information concerning vessels operating in or bound for the United States, Congress recently required certain ships to be equipped with and to operate AIS systems pursuant to Coast Guard regulations.[2]

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[1] *See* 47 U S.C § 902(b)(2)(A), *see also* 47 U S.C. § 305.

[2] *See* Maritime Transportation Security Act of 2002, Pub. L 107-295, § 102, 116 Stat. 2064, 2068-2085 (2002) (*adding* a new port security subtitle to Title 46 of the U.S. Code. The provision requiring AIS is codified at 46 U.S.C. § 70114. The Coast Guard and the SLDSC have issued rules to implement this statute. *See* National Maritime Security Initiatives, Area Maritime Vessel, Facility, and Outer Continental Shelf Security; Automatic Identification System, Vessel Carriage Requirement, 68 Fed. Reg. 60447 (October 22, 2003), Seaway Regulations and Rules. Automatic Identification System, 68 Fed Reg 9549 (February 28, 2003)

The AIS requires two separate frequencies in order to operate safely and reliably as defined in International Telecommunication Recommendations (ITU-R) M. 1371 and ITU-R M. 1084 Recognizing the importance of this worldwide maritime system, the 1997 World Radiocommunication Conference (WRC-97) designated the use of Channels 87B and 88B for AIS use on the high seas [3] Channels 87B and 88B are considered wideband channels, each comprising of 25 kHz of spectrum To ensure a seamless worldwide AIS operation consistent with IMO Resolution A.917(22), the United States should follow the WRC lead and designate Channels 87B and 88B as AIS frequencies, thus avoiding the need to identify and switch to other designated AIS channels within each jurisdiction. Switching to other AIS channels increases the potential for negative consequences to maritime safety, such as increasing potential collisions.

As clarified in a recent letter to you, Channel 88B is already allocated on a primary basis to the Federal Government [4] NTIA has already designated this channel for exclusive AIS use The other channel necessary for AIS operation, Channel 87B, is currently allocated to very high frequency (VHF) public correspondence service.[5] Channel 87B was auctioned by the Commission as part of a block of VHF Public Coast areas (VPC) frequencies in 1998. As part of this auction, the Commission required winning licensees to negotiate with the Coast Guard to specify two offset narrowband channel pairs for AIS use in the Ports and Waterways Safety System (PAWSS) [6] MariTEL was one of the auction winners. The Coast Guard and MariTEL entered into a Memorandum of Agreement (MOA) through which both parties agreed that Channel 87B would be used for AIS and related safety systems. At the time, the Commission supported this

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[3] AIS base station operations are permitted in ITU-R M.1371. Since the process used to assign and broadcast in Time Division Multiple Access slots can create schedule conflicts between AIS base stations, base station use of AIS time slots and frequencies must be subject to coordination by a competent authority (*i.e.*, the Coast Guard) to ensure safety of navigation and security.

[4] *See* Letter to John B Muleta, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Frederick R Wentland, Associate Administrator, Office of Spectrum Management, NTIA, in DA 03-2223 (August 1, 2003).

[5] *See* NTIA Manual of Regulations and Procedures for Federal Radio Frequency Management (NTIA Manual) at Section 4.1.3 (revised May 2003; *see also* 47 C.F.R. § 2 106)

[6] *See Amendment of the Commission's Rules Concerning Maritime Communications*, Third Report and Order and Memorandum Opinion and Order 13 F.C.C Rcd.19853, 19877 (1998) In this Order, the Commission stated that if good faith negotiations failed, the Coast Guard could ask the Commission to revisit the issue and select channels and locations for AIS.

agreement noting that it accomplished the "Commission's goal of providing PAWSS with two narrowband channel pairs."[7] Moreover, in a recent Commission proceeding addressing the authorization of Channel 87B for AIS operation to meet WRC-97 channel requirements, the Commission concluded that two channel pairs should be set aside in each maritime VPC for AIS for the purpose of enhancing the safety of life and property on vessels in the United States waters by reducing collisions, groundings, and environmental harms.[8] Although it was originally thought that in the maritime safety context AIS could be operated on narrowband channels, as indicated in the enclosures, subsequent technical analysis and operational experience have confirmed that effective use of AIS for both maritime safety and homeland security requires operating AIS on wideband channels.[9]

The critical need to preserve Channel 87B for use in AIS was recently reinforced in letters from both the U S Department of Homeland Security's Coast Guard, as well as Department of Transportation's SLSDC These letters clearly outline the importance of dedicating VHF channel 87B for their maritime safety and homeland security missions.[10] Moreover, because Channel 87B is an internationally recognized channel for AIS operations, it must be preserved for AIS so that authorities can monitor international commercial maritime traffic. For example, the SLSDC is responsible for the operations and maintenance of the U S. portion of the Seaway between Montreal and Lake Erie and has the authority to prescribe that specific communications, navigation, and other electronic equipment be installed aboard ships in the Seaway in the interests of safety.[11] Indeed, the SLSDC is the Coast Guard's legal counterpart along the Seaway, and its AIS system will operate seamlessly with the Coast Guard's system when that system has been

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[7] *Wireless Telecommunications Bureau Announces the Selection of Two VHF Channel Pairs for the United States Coast Guard's Ports and Waterways Safety System*, Public Notice, DA 01-925 (released April 13, 2001).

[8] *See Amendment of the Commission's Rules Concerning Maritime Communications,* Fourth Further Notice of Proposed Rulemaking 17 F C C Rcd. 227, 235 (2001)

[9] *See* Letter to Fredrick R Wentland. Associate Administrator, Office of Spectrum Management, NTIA from Emil H. Frankel, Assistant Secretary for Transportation Policy, U.S. Department of Transportation and Albert S. Jacquez, Administrator, Saint Lawrence Seaway Development Corporation, U S. Department of Transportation (July 30, 2003); Letter to Fredrick R Wentland, Associate Administrator, Office of Spectrum Management, NTIA from Rear Admiral C I Pearson, U.S. Coast Guard, Department of Homeland Security (July 18, 2003)

[10] *Id.*

[11] 33 U.S.C. §§ 1223-27, 1231, 1232

completed [12] The SLSDC uses AIS to monitor "high interest vessels" such as fuel tankers, hazardous-cargo ships and passenger vessels. According to SLSDC, the Seaway AIS system uses Channels 87B and 88B, and Industry Canada also uses those channels for the operation of the Canadian portion of the Seaway AIS system SLSDC Thus the U S. - Canadian AIS operation is international and unified. The Coast Guard, likewise stressed the need for maintaining Channel 87B because AIS is used as a maritime domain awareness (MDA) tool in support of homeland security and navigation safety.

This issue is of paramount concern because of recent efforts by MariTEL to prevent the maritime industry's and the Federal Government's use of these channels. Among their efforts is a recently filed Emergency Petition that seeks a declaratory ruling from the Commission that shipborne AIS transmitters may not operate on Channel 87B or Channel 88B.[13] NTIA hereby opposes that Emergency Petition As stated above, Channel 88B is already allocated on a primary basis to the Federal Government, thus MariTEL's claims with respect to that channel are without merit. More importantly, the security of the United States as well as the safety of the ships that use its waterways cannot be put at jeopardy simply because MariTEL has requested the Commission to withdraw the authorization of shipborne users to operate on Channels 87B and 88B. The practical and legal implication of a private company dictating the use of frequencies necessary for maritime safety and homeland security is a serious cause of concern for this country's spectrum management process.

MariTEL also terminated the MOA that the Commission required it to enter into with the Coast Guard. While the Commission initially considered and rejected designating channel 87 B for AIS, it stated that if good faith negotiations failed in selecting AIS channels, the Commission would revisit the issue. Specifically, the Commission stated that "[i]f good faith negotiations yield no agreement within one year of the date the Coast Guard submitted its initial proposal, the Coast Guard may ask the Commission to revisit this issue and select the channels and locations."[14] The Commission noted that by permitting the Coast Guard and the VPC licensee to negotiate a plan to select the channels for AIS, the Coast Guard would have "time to develop its AIS plans fully and coordinate AIS frequencies with neighboring countries." The Commission clearly assumed that negotiations could result in the identification of channels for AIS. A change in that agreement, *i.e.*, a change in the channels designated for AIS, would negate any planning that the Coast Guard put into developing the AIS system for the U S as well as neighboring countries.

In practical terms, termination of Channel 87B and Channel 88B authorizations would preclude Canada from using the frequencies thus disrupting both U.S. and Canadian Seaway

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[12] *See* 33 U S.C. § 1221 *et seq.*

[13] *See* MariTEL Emergency Petition for Declaratory Ruling (filed October 15, 2003).

[14] Third Report and Order and MO&O at ¶ 49

operations More importantly, there is no practical plan to transition to a different frequency for AIS operations, other than 87B and 88B, without negative consequences to maritime safety and homeland security. The U S Government would also have to expend considerable time, money and resources to implement a new plan, assuming one is possible

NTIA urges the Commission to work with NTIA to allocate Channels 87B and 88B for exclusive AIS operations by deleting current footnote US 223 and adding the following footnote to the U.S. Table of Frequency Allocations:

> US Footnote XXX
> Channel 87B (161.975 MHz +/- 12 5 kHz) and Channel 88B(162 0125 MHz +/- 12.5 kHz) are allocated exclusively for AIS in coastal and navigable waterways.

This change to the U S. Table of Frequency Allocations would be consistent with the designation in the international table of allocations that recognizes Channels 87B and 88B for the AIS. Moreover, this change would ensure maritime safety and homeland security needs are met. Meeting these concerns is consistent with recent action by Congress requiring the Coast Guard to establish AIS carriage requirements for vessels operating in U.S. waters to improve maritime safety and security [15] Allocating these channels to AIS would eliminate any future need to revisit this issue unlike the current situation caused by a failure to reach agreement or a change in circumstance by a licensee Such certainty is paramount to the long term goal of stable investment in AIS, an important safety and security technology.

NTIA looks forward to working with the Commission in this matter to ensure maritime safety and homeland security within the United States.

Sincerely,

Fredrick R. Wentland
Associate Administrator
Office of Spectrum Management

Enclosures

cc Edmond J Thomas, Chief, Office of Engineering and Technology

[15] *See supra* n. 2

U.S. Department of Homeland Security

United States Coast Guard

Commandant
United States Coast Guard

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2400

18 JUL 2003

Mr. Frederick R. Wentland
Associate Administrator, Office of Spectrum Management
National Telecommunications and Information Administration
Herbert C. Hoover Building
14th and Constitution Avenue, N.W.
Washington, DC 20230

Dear Mr. Wentland:

Thank you for meeting with members of the Coast Guard on July 15 to discuss with you and your staff the vital spectrum matters associated with the implementation of the universal shipborne automatic identification system (AIS) in the United States in a way fully compatible with on-going international implementation of this system. The most urgent of these matters and the subject of this letter is based on FCC Public Notice DA 03-2223, released July 9, 2003, with a comment period ending July 21 and a reply comment period ending July 28. This public notice solicits public comment on MariTEL Inc.'s petition for declaratory ruling that it holds exclusive rights to the use of Channel 88B (162.025 MHz) within 75 miles of the Canadian border as a result of its winning FCC's Public Auction #20.

The Coast Guard welcomes your proffered assistance and urgently requests that NTIA file comments, on behalf of all Federal Agencies, in opposition to the pending MariTEL request. This channel, essential to the operation of the internationally adopted AIS system, has long been considered a Federal Government Channel with only footnote US223 indicating that it "may" be authorized for public correspondence use in the Canadian Border Region. There is currently no U.S. public correspondence service operating on that channel in that region, and we have so far been unable to identify any such operation in the past.

The Coast Guard specifically notes that if the FCC were to grant MariTEL's petition:

The USCG would be unable to implement AIS systems in any northern Border Region utilizing the internationally designated and accepted Channel 88B. While the use of other channels is permitted within the International Telecommunications Union regulations, such use would be incompatible with Canadian shipping operating in international waters, thus endangering maritime safety and homeland security. The Coast Guard and the Saint Lawrence Seaway Development Corporation (SLSDC) AIS systems will form a nationwide maritime AIS system, although separately operated. It is imperative that a smooth integration with the USCG AIS-based programs with the Seaway's AIS system is ensured, both of which are vital to safety and homeland security. The Coast Guard understands that the Department of Transportation, through the SLSDC, will address the impact of such a ruling on the safety and security of the Saint Lawrence Seaway.

The USCG would be unable to effectively meet all aspects of the Maritime Transportation Security Act (MTSA), Public Law 107-295. The MTSA not only mandated the use of AIS on

designated vessels operating in U.S. waters, but indicated that this mandate would allow the Coast Guard to increase its ability to monitor those vessels operating in U.S. waters, thus enhancing the nation's homeland security. Furthermore, at the request of the U.S., the International Maritime Organization (IMO) accelerated by four years its mandate for vessels subject to the Safety of Life at Sea (SOLAS) Convention to carry AIS. This equipment operates on Channel 88B. The USCG released and made effective the first set of regulations implementing both the MTSA and IMO requirements earlier this month. *See* Automatic Identification System; Vessel Carriage Requirement, 68 Fed. Reg. 39353 (July 1, 2003). The main purposes of these and other planned USCG rulemakings and actions are to enhance homeland security and maritime safety while at the same time ensuring compatibility with the previously planned international system.

The Coast Guard further notes that Canada indicated in a joint-Coast Guard/NTIA/Industry Canada meeting in Ottawa in September 2000, that it intended to allocate Channel 88B nationwide for AIS purposes. Channel 88B was allocated from public correspondence to AIS purposes at the 1997 ITU World Radio Conference (see RR AP18).

In our numerous discussions with MariTEL's previous management, the subject of Channel 88B was never raised as we both understood, as did the Interdepartment Radio Advisory Committee and its Frequency Assignment Subcommittee, that the Federal Government's primary (if not exclusive) authorized use of Channel 88B throughout the U.S. had long been settled. Only recently has MariTEL asserted that it, rather than the Federal Government, has exclusive rights to the use of Channel 88B within 75 miles of the Canadian Border, apparently based on the provision of US Footnote 223 and the terms of an FCC auction action, as documented in MariTEL's pending petition and the FCC's subsequent public notice. As we discussed on July 15, the enclosure identifies basic points regarding the status of channel 88B in the Canadian border areas. We offer these as points that could be articulated in NTIA comments to the FCC.

The Coast Guard urges NTIA, in the strongest terms possible, to oppose the pending MariTEL petition to the FCC on behalf of the Federal Government. We urge NTIA to ensure that this Channel 88B is available to the Federal agencies for unencumbered use throughout the U.S. for AIS purposes by Federal Government and by USCG-authorized, FCC-licensed entities and ships that may operate AIS under CG auspices. The availability of this channel is essential for meeting the homeland security and maritime safety needs of the American public. To that end, Coast Guard staff is available to assist NTIA in preparing its comments.

Sincerely,

C. I. PEARSON
Rear Admiral
U S. Coast Guard
By direction

Enclosure

Copy: Kathy Smith, NTIA Chief Counsel
Joel Szabat, Deputy Assistant Secretary for Transportation Policy, OST

Enclosure

FCC Public Notice DA-03-2223 Channel 88 (162.025 MHz) – Background:
Suggested Points for Comments on Channel 88B in the Canadian Border Region

1. The United States Table of Frequency Allocations identifies channel 88B (162.025 MHz) as a frequency allocated to the Federal Government. *See* 47 C.F.R. § 2.106. In particular, use of the channel in the fixed and mobile services are allocated "on a primary basis to the Government non-military agencies." *See* 47 C.F.R. §2.106, n.G5.

2. Although non-Government stations may be authorized to use Government frequencies, *see* 47 C.F.R. § 2.106(c), such operations must be in accordance with NTIA rules and "shall not cause harmful interference to Government stations." *See id.* § 2.102(c) (1)-(4).

3. Footnote 223, on which MariTEL builds its argument for exclusive right to use channel 88B in the United States, states:

   "Within 75 miles of the United States/Canada border on the Great Lakes, the St. Lawrence Seaway, and the Puget Sound and the Strait of Juan de Fuca and its approaches, use of coast transmit frequency 162.025 MHz and ship station transmit frequency 157.425 MHz (VHF maritime mobile service Channel 88) may be *authorized for use* by the maritime service for public correspondence." 47 C.F.R. § 2.106, n.US223 (emphasis added).

   a. Of particular note, footnote US223 merely authorizes the possible *use* of the frequency by public correspondence licensees.

   b. By its plain language footnote US223 in no way allocates the frequency away from the Federal Government, nor does it in any way imply that public correspondence use of the channel would be exclusive in nature.

   c. Since the adoption of footnote US223, the Table of Frequency Allocation has continued to indicate that channel 88B is a Government channel, with the channel being available for "use by the maritime service for public correspondence," pursuant to footnote US223. *See* 47 C.F.R. §2.106, n.G5.

4. In context of discussing VHF frequencies for use with Automatic Identification Systems (AIS), as part of the amendments to the Part 80 rules, the FCC specifically acknowledged that channel 88B is allocated to Government, non-military agencies, citing the 47 C.F.R. § 2.106 n.G5. *See* FCC Third Report & Order and Memorandum Opinion and Order, in the matter of Amendment of the Commission's Rules Concerning Maritime Communications, PR Docket No. 92-257, 13 FCC Rcd. 19853, ¶ 47.

5. In the 156-162 MHz VHF Public Coast Station license auction (Auction 20) package the FCC stated that the auction bidders had an obligation to conduct due diligence prior to submitting their bids. Similarly, the Auction 20 document cautioned prospective bidders to be thoroughly familiar with the procedures, terms, and conditions of various FCC decisions

regarding frequencies for maritime communications including, by reference, those contained in the Third Report and Order. *See* FCC, Auction of 156-162 MHz VHF Public Coast Station Service Licenses, 98-1796 *13 FCC Rcd. 19443* (Sept. 4, 1998). Moreover, the FCC stated that bidders had "the responsibility [] to remain current with all Commission Rules and with all public notices pertaining to this auction." *Id.* Part of the bidders' due diligence obligations was to investigate possible encumbrances. Although the Auction 20 document did not specifically cite potential government encumbrances on the frequencies auctioned, these broad due diligence statements and the reference to the Third Report and Order gave potential bidders notice to thoroughly research the status of those frequencies being auctioned, including Channel 88B, which the FCC had previously clearly identified as a Government channel.

6. Frequency coordination in the border region is governed by the *Exchange of Notes (October 24, 1962) between the Government of the United States of America and the Government of Canada concerning the Coordination and Use of Radio Frequencies above Thirty Megacycles per second*, as reflected in 47 C.F.R. § 80.57. Under that agreement Canada is afforded primacy on Channel 88B and any operation envisioned by MariTEL or any other licensee would have to give due regard to Canadian usage. The FCC's Auction 20 package also notified bidders that they should be aware of the U.S.-Canadian agreement, and 47 C.F.R. § 80.57, which could affect the use of the auctioned frequencies. 47 C.F.R. § 80. 57(f) states:

> Canada/U.S.A. channeling arrangement for East Coast VHF maritime mobile public correspondence. For purposes of this section, channels on the east coast will be assigned as follows: (1) The provisions of the arrangement apply to the Canadian and U.S.A. east coast waters including the St. Lawrence Seaway within the coordination boundaries of "Arrangement A" of the Canada/U.S.A. Frequency Coordination Agreement above 30 MHz. (2) The arrangement applies to the following public correspondence channels: Channels 24, 84, 25, 85, 26, 86, 27, 87, 28, and 88. (3) Canada and the U.S.A. use the following channeling arrangement: **(i) Canadian channels: 24, 85, 27, 88 (Note 1).** (ii) U.S.A. channels: 84, 25, 86, 87, 28 (Note 2). (iii) Shared channel: 26 (Note 3). Notes: 1. **Also assignable to U.S. stations within the frequency coordination zone following successful coordination with Canada**

7. In September 2000 the NTIA, Industry Canada, and the Coast Guard met to discuss AIS frequency issues. At that time Canada advised it would operate AIS on 87B and 88B, pursuant to the international designation of those frequencies as AIS 1 and AIS 2, respectively. The Coast Guard and NTIA advised Industry Canada that pursuant to an expected agreement between the Coast Guard and MariTEL, the Coast Guard would also be operating AIS on channels 87B and 88B.

U.S. Department
of Transportation

400 Seventh Street, S.W.
Room 5424
(202) 366-0091

Saint Lawrence
Seaway Development
Corporation

July 30, 2003

Mr. Frederick R. Wentland
Associate Administrator
Office of Spectrum Management
National Telecommunication
and Information Administration
U.S. Department of Commerce
14th Street and Constitution Avenue, N.W.
Washington, DC 20230

Dear Mr. Wentland:

On behalf of the U.S. Department of Transportation ("DOT" or "Department") and one of its operating administrations, the Saint Lawrence Seaway Development Corporation ("SLSDC"), we are writing to ask the NTIA to take all necessary actions to secure both Channel 87B and Channel 88B for primary federal government use so that they are fully available for use by the SLSDC for its St. Lawrence Seaway Automatic Identification System (AIS).

Continued federal control of Channels 87B and 88B is necessary for the operation of AIS, an essential system for vessel safety and national security that enables the SLSDC to track seagoing vessels as they transit the Seaway. The Canadian government already uses the same channels for AIS, the United States Coast Guard ("Coast Guard") is in the process of doing the same, and these channels are the international standard for AIS.

The SLSDC's June 21, 2003, letter informed you that MariTEL, Inc., has petitioned the Federal Communications Commission ("FCC") for a declaratory ruling granting MariTEL exclusive rights to Channel 88. MariTEL also asserts exclusive rights to Channel 87. MariTEL's success in either claim would force the SLSDC to shut down the AIS in the international section of the Seaway as both channels are needed for the system to continue to operate.

MariTEL has asserted that the SLSDC may not use Channel 87B after November 5, 2003. This puts an untenable cloud on our joint operation of the Seaway with Canada. If MariTEL were to prevail and the SLSDC had to cease using Channels 87B (161.975 MHz) (AIS-1) and/or 88B (162.025 MHz) (AIS-2) for its AIS, it would immediately reduce maritime safety and security in the international Seaway System, with possible international repercussions.

By this letter, SLSDC and the Department therefore ask the NTIA to take the necessary action to secure both Channel 87B and Channel 88B for primary federal government use so that they are fully available for use by the SLSDC and for the Coast Guard and the Department of Homeland Security to allow us to establish a single nationwide AIS service that conforms to international standards and meets our maritime safety and national security responsibilities.

BACKGROUND

MariTEL

MariTEL purchased at FCC-sponsored auctions VHF public correspondence frequencies designated for VHF Public Coast Stations ("VPC stations"). *See Amendment of the Commission's Rules Concerning Maritime Communications, Third Report and Order and Memorandum Opinion and Order*, PR Docket No. 92-257, 13 FCC Rcd 19853 (1998) ("*3rd R&O*"); Public Notice, DA 99-195, 1999 FCC LEXIS 225 (released May 21, 1999) and Public Notice DA 01-1443 (released June 15, 2001) Essentially, MariTEL secured these frequencies in the areas of the coastal U.S., including Hawaii, Alaska, and the Great Lakes. Among the conditions imposed on MariTEL by the FCC was a standard requirement to "build out" the facilities necessary to provide a "substantial" level of the intended service within five years. 47 C.F.R. § 80.49

The majority of these coastal stations have closed in recent years due to competition from other communications media, such as cellular telephone service and small satellite terminals. Therefore, MariTEL has not been able to implement its original business plan. Thus, on March 27, 2003, MariTEL requested that the Commission extend the build out deadline for two years so that it could use the relevant frequencies for data rather than voice communications. DA 03-1484 MariTEL advised the FCC that it had ceased all services pending development and implementation of a new business plan. MariTEL now claims that its new business plan involves the provision of automatic vessel location, e-mail, and other messaging services, and that it is "likely" to use AIS technology. MariTEL has been aware of the SLSDC's intended use of these channels for AIS purposes since at least early 2001, but did not notify the SLSDC of any objection until February of this year. MariTEL's apparent intention to use both Channels 87B and 88B for these new purposes has caused the SLSDC extremely serious concern, for the reasons discussed in this letter.

The St. Lawrence Seaway

The St. Lawrence Seaway is one of the world's most comprehensive inland navigation systems. Following years of construction and inter-government cooperation between the United States and Canada, the system of channels, locks, and hydroelectric power stations that comprise the Seaway opened in 1959. The Seaway is a critical transportation link that connects the markets and manufacturing, mining, and agricultural producers of the Upper Midwest and Canada to each other and to the Atlantic. Maritime commerce on the Great Lakes and Seaway annually generates in the U.S. more than 150,000 jobs, $4.3 billion in personal income, $3.4 billion in transportation-related business revenue, and $1.3 billion in federal, state, and local taxes.

Management of the Seaway is shared by and coordinated between the U.S. and Canada, through the SLSDC for the U.S., and the St. Lawrence Seaway Management Corporation ("SLSMC") for Canada. The SLSDC is an operating administration of DOT and a wholly owned government corporation. In the broadest terms, the SLSDC is responsible for the operations and maintenance of the U.S. portion of the Seaway between Montreal and Lake Erie. More specifically, SLSDC statutory obligations extend to vessel traffic control management in areas of the St. Lawrence River and Lake Ontario, maintaining and operating surveillance and communications systems, locks, and navigation aids. The SLSDC engages as well in environmental and trade development programs. Finally, and particularly germane to this proceeding, the SLSDC has authority to prescribe that specific communications, navigation, and other electronic equipment be installed aboard ships transiting the Seaway and prescribe their use in the interests of safety. 33 U.S.C. §§ 1223-27, 1231, 1232

The Seaway AIS System Is Vital to Maritime Safety and Security

The SLSDC and SLSMC have long employed a Vessel Traffic Services ("VTS") system to monitor the progress of commercial maritime traffic, and thereby help to ensure thousands of safe and expeditious passages through the Seaway annually. In the mid-1990s, the SLSDC and SLSMC began to sponsor the development of a Global Positioning System ("GPS")-based VTS system using AIS at its core. Testing established the viability of AIS technology. AIS is an application of VHF radio technology developed for both safety and commercial uses and subject to international technical and interoperability requirements. The result was that beginning in 1999 the SLSDC and SLSMC erected nine transmission stations along the Seaway, from Montreal to Lake Erie. More recently, the SLSDC and the SLSMC amended their joint regulations to mandate use of AIS in Seaway waters from St. Lambert, Quebec, to Long Point, Ontario (mid-Lake Erie), effective at the beginning of the 2003 navigation season. (*See* 33 C.F.R. § 401.20; 68 Fed. Reg. 9549 (February 28, 2003)) The development and implementation of the AIS system was fully supported and partially funded by the maritime industry.

For the first time, all vessel control centers in the Seaway share a common electronic vessel information database. The Seaway AIS system is now in operation using the two channels, 87B and 88B. These channels are the universal, internationally designated standard channels for shipborne AIS. Your agency has provided the SLSDC frequency assignments for both channels. NTIA records TRAN030000 through TRAN030005, inclusive. In addition, the Canadian government (through Industry Canada) has also assigned the use of Channels 88B and 87B for the SLSMC's operation of the Canadian portion of the Seaway AIS system. The SLSDC and SLSMC AIS operation is thus an international, unified system.

The Seaway AIS system supports and is vital to the SLSDC's responsibilities for maritime safety and homeland security. Those obligations do not reside solely in the aforementioned federal statutes. The International Maritime Organization ("IMO"), an agency of the United Nations, is an international organization established to promote marine safety. Through its member states, including the U.S., the IMO has adopted the International Convention for Safety of Life at Sea ("SOLAS") in furtherance of this basic mission. SOLAS has designated AIS as a primary means of avoiding ship collisions, especially during inclement weather when shipboard radar can be impaired. SOLAS therefore provides for vessels to carry AIS equipment according to a phased-in schedule depending upon ship type and tonnage. It has also designated Channels 87B and 88B as the international maritime AIS frequencies. The original final deadline under SOLAS was July 1, 2008. In an effort to improve marine safety and security following the events of September 11, 2001, the U.S. successfully urged that the AIS carriage requirement be accelerated. That final global deadline is now December 31, 2004. In the Seaway, AIS use is mandatory now and the system uses both channels in conformance with the SOLAS requirements.

Federal law now expands upon this AIS carriage requirement for security purposes, effectively making it applicable domestically. In addition to being consistent with IMO technical requirements, the Seaway AIS system already is fully consistent with the Maritime Transportation Security Act of 2002 ("MTSA"), which requires that certain passenger vessels and other ships (either of a specified size or as determined by the Department of Homeland Security) carry AIS equipment within the navigable waters of the U.S. on a phase-in schedule consistent with the IMO requirements. 46 U.S.C. § 70114 The U.S. Coast Guard is now implementing the MTSA through rulemaking.

All vessels transiting the Seaway from Montreal (St. Lambert), Quebec, to Long Point, Ontario, now use AIS to transmit in real-time such information as vessel identification, position, speed, heading, etc., to other nearby vessels and also to Seaway Vessel Traffic Centers ("VTCs") operated by the United States and Canada. Both AIS Channels 87B and 88B are also used by the joint VTCs to transmit critical waterway information such as water levels, wind speed and direction, and meteorological data.

The shore-to-ship broadcast of this same kind of information by VTC through shore base-stations via AIS channels provides timely information that is essential for the safety of vessel transits in the Seaway.

VTCs operated by the SLSDC and SLSMC closely scrutinize the movement of all vessels designated as homeland security concerns. The SLSDC and SLSMC also monitor so-called high interest vessels ("HIVs") like fuel tankers, hazardous-cargo ships, and passenger vessels. In the event it becomes necessary, security information about HIVs could be transmitted through AIS rather than communicated via voice radio transmissions, which are more susceptible of interception.

Termination of SLSDC's Assignment to Use 87B and 88B Would Compromise Maritime Commerce of Canada and the U.S. International Agreement Obligations to Canada Regarding the Seaway

If MariTEL prevails, it would interfere with U.S. obligations to Canada and the SLSMC that arise out of the international nature of the Seaway. Agreement between the United States of America and Canada effected by Exchange of Notes at Ottawa, August 17, 1954 Treaties and Other International Acts Series 3053, Department of State Publication 5666; Act of May 13, 1954, *supra*. Under section 6 of that agreement, the government of Canada has the right of consultation on U.S actions affecting the Seaway, which read as follows:

> (a) It is recognized that it is of great importance to Canada and the United States that the St. Lawrence Seaway be used to the maximum extent required by the needs of commerce. It is understood therefore that both Governments will use their best endeavours [sic] to avoid placing unreasonable restrictions on the transit of passengers, shipping or trade in the international section of the St. Lawrence Seaway.
>
> (b) It is further agreed that each Government will consult the other before it enacts any new law or promulgates any new regulation, applicable in the respective parts of the international section of the St. Lawrence River, which might affect Canadian or United States shipping, or shipping of third-country registry proceeding to or from Canada or the United States respectively.
>
> (c) Similarly, with respect to any laws or regulations now in force in either country which affect shipping interests of the other country in the international section of the St. Lawrence River, the Government affected may request consultation concerning such laws and regulations and the other shall accede to requests for consultation.

Since the Seaway AIS system is a seamless, jointly operated system under the Agreement, termination of the SLSDC's assignment to use Channels 87B and 88B, which it has currently, would effectively preclude Canada's use as well. Such a circumstance will undoubtedly have a significant impact, not only on Canadian Seaway operations, but on the shipping trade of Canada. This industry already has invested in the implementation of the Seaway AIS system as well as in the equipment necessary to use it. More importantly, the maritime community would lose the increased level of safety and security they currently enjoy from a government AIS system. This alone makes invocation of one or more of these above clauses a real possibility.

Finally, DOT and SLSDC believe that the FCC has traditionally shown the proper sensitivity to radio spectrum relationships with Canada. *See* 47 C.F.R. § 80.1(a) (referencing compliance with the "Great Lakes Radio Agreement"); and § 80.57(e) (U.S./Canada VHF public correspondence channeling arrangements for the Seaway and Great Lakes). We urge the NTIA to help ensure that this sensitivity continues for the benefit of both countries.

Conclusion

The DOT and the SLSDC urge NTIA, in the strongest terms possible, to take the necessary action to relocate Channel 87B to primary federal government use, so that both it and Channel 88B are fully available for use by the SLSDC and its Canadian partner for their St. Lawrence Seaway AIS. If MariTEL prevails, it puts at risk safety and security improvements that have already been realized and resources that have already been invested. The availability of both Channels 87B and 88B for these purposes is essential to fulfill the international obligations of the U.S. to Canada for the joint operation of the Seaway and to other signatories of SOLAS, and to meeting the homeland security and maritime safety needs of the American public.

Sincerely,

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